85-365

No. ——

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

SEDESSA RUSTIN

and

FELICIA SHADE TATE,
Petitioners

v.

DISTRICT OF COLUMBIA,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

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QUESTIONS PRESENTED

1. Whether Constitutionally guaranteed equal protection of the laws is denied by the District of Columbia to persons lawfully present in Federal offices here at the Seat of Government when local District of Columbia officials knowingly permit unlicensed privately employed guards, including in fact habitual drug users, to carry pistols in such Federal offices when Federal statutes and D.C. regulations prohibiting such unlicensed armed private guards are rigorously enforced everywhere else in the District, and when Congress has specified that laws and regulations of the District for protecting property and preserving peace and order are extended to buildings belonging to the United States within the District.

2. Whether due process is denied when the District of Columbia Court of Appeals grants sovereign immunity to the District of Columbia from suit based on deliberate continuing refusal by the District to comply with statutes enacted by Congress, while expressly refusing to decide, or even consider, whether the District's action was within the scope of discretion given to it by the Constitution and by Congressionally enacted Federal and D.C. laws cited to the court which bar the result the District intended to, and did, produce; *i.e.*, to allow the arming of privately employed guards in Federal offices at the Seat of Government although, contrary to Congressional enactment, those guards were, and still are, unlicensed and in some cases were drug addicts.

3. Whether, with District of Columbia Self-Government laws, the same standards of equal protection and due process apply to local D.C. officials under the Fifth Amendment to the Constitution as apply to State officials under the Fourteenth Amendment.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
OPTIONS BELOW	1
JURISDICTION	2
STATUTES AND REGULATIONS INVOLVED	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	7
CONCLUSION	14
APPENDIX:	
A. D.C. Court of Appeals Decision and Judgment	1a
B. Judgment of the D.C. Court of Appeals	11a
C. Denial of Rehearing	12a
D. D.C. Superior Court Decision	13a
E. Statutes and Regulations Involved	19a

TABLE OF AUTHORITIES

Cases: Page

Bolling v. Sharpe, 347 U.S. 497 (1954) 9
Chandler v. D.C., 404 A.2d 964 (D.C. App. 1979) 13
Dandridge v. Williams, 397 U.S. 471 (1970) 10
Flemming v. Nestor, 363 U.S. 603 (1960) 10
Frontiero v. Richardson, 411 U.S. 677 (1973) 11
F.S. Royster Guano Co. v. Virginia, 253 U.S. 412 (1920) 9
Harlow v. Fitzgerald, 457 U.S. 800 (1982) 13
Helvering v. Davis, 301 U.S. 619 (1937) 10
Home Building & Loan Ass'n v. Blaisdell, 290 U.S. 398 (1934) 12
Johnson v. D.C., 118 U.S. 19 (1886) 13
Northern Pac. Ry. v. Duluth, 208 U.S. 583 (1908) 12
U.S. Ry. Retirement Bd. v. Fritz, 449 U.S. 166 (1980) 9, 10
Weinberger v. Wiesenfeld, 420 U.S. 636 (1975) 11
Wyandotte Transportation Co. v. U.S., 389 U.S. 191 (1967) 10

Statutes and Regulations:

4 D.C. Code § 114 ..... 2, 5, 6
4 D.C. Code § 115 2
4 D.C. Code § 116 ..... 2, 6, 7, 11
22 D.C. Code § 3203 ..... 2, 10
22 D.C. Code § 3204 ..... 2, 10
22 D.C. Code § 3205 ..... 2, 10
40 U.S.C. § 101 ..... 2, 7, 11
D.C. Rules and Regulations 5JJ 2, 4, 5, 6

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DISTRICT OF COLUMBIA,

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PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

Sedessa Rustin and Felicia Shade Tate petition for a writ of certiorari to review the judgment of the District of Columbia Court of Appeals.

OPINIONS BELOW

The opinion of the Court of Appeals (App.A) is reported at 491 A2d 496. It covers two consolidated appeals, No. 84-261 as to the District of Columbia and No. 84-138 as to Washington Patrol Service, Inc. Petitioners seek a writ of certiorari only as to No. 84-261 concerning the District of Columbia. The opinion of the Superior

Court of the District of Columbia (App.D) has not yet been officially reported.

JURISDICTION

The judgment of the Court of Appeals was entered on April 18, 1985 (App.B), and a petition for rehearing was denied on June 18, 1985 (App.C). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

STATUTES AND REGULATIONS INVOLVED

The case involves equal protection of the laws as encompassed in the due process provision of the Fifth Amendment to the Constitution of the United States.

4 D.C. Code § 114 authorizes the Mayor of the District of Columbia to appoint special policemen, and 4 D.C. Code § 115 specifies the Mayor's duty to preserve public peace, prevent crime, protect persons and property, and enforce and obey all laws in force in the District which are applicable to police (App.E.1).

In 4 D.C. Code § 116, also codified in 40 USC 101, Congress has specified that:

> "The provisions of the several laws and regulations within the District of Columbia for the protection of public or private property and the preservation of peace and order are extended to all public buildings and public grounds belonging to the United States within the District of Columbia."

22 D.C. Code § 3203 makes possession of a pistol by a drug addict a crime, and states that knowingly making a pistol available to such a person is a crime, and 22 D.C. Code § 3204 requires a license for any person to carry a pistol openly or concealed, and 22 D.C. Code § 3205 states limited exceptions for police. (App.E.1).

Title 5JJ of District of Columbia Rules and Regulations sets minimum standards for certification of unarmed private guards (pertinent sections in App.E.2).

STATEMENT OF THE CASE

James Kenneth Tate, the petitioners' decedent, was shot to death on October 7, 1980 while working as a contractor security guard in offices of the United States Environmental Protection Agency (EPA) at 401 M Street SW, in Washington, D.C. He was killed by a fellow security guard, Barthaniel Robinson. Their employer was Washington Patrol Service, Inc. (WPS), a private detective business licensed by the District of Columbia government, and under contract to the General Services Administration (GSA) to provide security services for Federal offices. The District of Columbia knew that guards at the EPA offices were given pistols while on duty.

The Acting GSA Regional Administrator had written to the D.C. Mayor, in January 1975, about the need to use contractor employees as armed guards at certain Federal offices in the District of Columbia, stating:

> "The District of Columbia City Council recently modified the regulation establishing standards for certification and employment for security officers, which was approved by the Mayor-Commissioner in December 1974. We agree with the purposes of the regulation and believe that the modification establishes desirable guidelines to determine one's suitability for employment as a security officer. However, the modification prohibits the carrying of firearms and makes no provision or exception for Federal Government contracts with private firms to provide security or guard service in Government-owned or leased premises.
>
> "GSA is responsible by law to provide protection for Government-owned and leased facilities under its charge and control. Security regulations of some Federal agencies occupying such space require the use of armed uniformed security officers. Due to personnel employment ceilings, uniformed contract guards must perform part of our workload.
>
> . . . .

> "In view of the unique mission of GSA, we believe that the regulation prohibiting security officers from carrying weapons should be considered inapplicable to security officers while on duty in the District of Columbia under GSA contracts. . . ."

In May 1975 the D.C. Corporation Counsel replied to GSA. He quoted the definition of "Security Officer", now Par.1.1(e) of DCRR 5JJ (App.E.2). As to arming guards, he then noted that "If such guards are not employees of the Federal Government, such are not expressly excluded from the above-quoted regulation", but that:

> "The regulation, read as a whole, was not in my view intended to cover security matters of the Federal Government, or those security officers who are charged with the responsibility of protecting Federal property. . . .
>
> "Accordingly, I conclude that the said regulation is not applicable to security officers while on duty on Federally-owned or leased premises in the District of Columbia pursuant to a contract with the General Services Administration."

Thereafter, GSA regularly contracted for guard services, including armed guards, with the full knowledge of the District of Columbia. The Federal Government sought to have prospective contract guards certificated or otherwise checked for suitability by the District of Columbia, but these attempts were rebuffed. A police detective named Jagen, designated by the District of Columbia, stated on deposition:

> "I have seen and heard of GSA contracts in various locations in the city where in the contract they have specified that the individuals must hold a D.C. Special Police Commission. And, as soon as we discover that a company is trying to run a fast one on us, supply guards to federal buildings using our commissions, we yank the commissions.

"But the federal government would love to have someone do the backgrounds for them and that's what they're trying to have done.

"Q. Why do you call it pull a fast one? I'm interested in that.

"A. I just told you that. Obviously, if you want to employ a guard, you'd want that guard checked out, right?

"Q. Yes.

"A. If I won't check him out, for whatever reason, you would love to have someone check him out. If you can find a loophole and get me to do it, you're going to do that, because I have the facility for checking the individual out.

"Understand? Which is apparently the case with the United States Government. *They don't have a system like the D.C. Government does that checks out the guards or special police officers for the license. So they would love to have someone that has the means to do that do it* and, therefore, it's not so farfetched to have them try to slip this into the contracts, which they have done, and we've rejected it." (Emphasis added).

Nearly five years after the D.C. Corporation Counsel's May 1975 letter GSA entered into the contract with WPS for guard service at 401 M Street calling for armed guards. WPS hired both the decedent, James Kenneth Tate, and his killer, Barthaniel Robinson. No application was filed, as required by District of Columbia Regulation 5JJ (App.E.2), for certification of either man as a Security Officer, or for their appointment by the Mayor as Special Policemen under 4 D.C. Code § 114 (App.E.1). The District of Columbia did not determine whether either man met the requirements of the Regulation.

A deposition given by Robinson and his Army records both reveal that prior to commencement of his employment with WPS, and while he was enlisted in the Army

between January 1977 and December 1979, he had received treatment for drug and alcohol abuse. His records also show that he was disciplined while in the Army, released before his enlistment ended, and prohibited from reenlisting. Robinson's deposition also states that he used drugs frequently after leaving the Army, that on the day of the shooting he had been drinking alcohol and smoking marijuana prior to coming on duty, and that he continued to consume alcohol and smoke marijuana while on duty. WPS issued a pistol to Robinson that day, as specified in its contract with GSA. Another guard on duty near Mr. Tate, Mrs. Sarah Watson, saw the killing. She said there was no quarrel or warning, and that Mr. Tate did not draw a gun.

After Mr. Tate's death, his Administratrix and his widow brought suit against the District of Columbia, WPS and Robinson. They cited 4 D.C. Code § 116, quoted above, and asserted that even if the regulation addressed by GSA and the Corporation Counsel (DCRR 5JJ-App. E.2) did not apply to contract guards in Federal offices, 4 D.C. Code § 114 (App.E.1) was the only authority under which such guards could be armed; and that authority had not been used. The Superior Court of the District of Columbia granted summary judgment for the District of Columbia on the grounds that the acts of the District in interpreting Federal and D.C. statutes and regulations, in allowing private guards at Federal offices in D.C. to be armed without regard to those statutes and regulations, and in refusing to certificate or otherwise determine the suitability of private guards intended to work in Federal offices, were discretionary acts entitling the District of Columbia to claim sovereign immunity. By separate action the same court granted summary judgment for WPS on the grounds that Workman's Compensation was the sole remedy available against the employer. Both summary judgments were appealed to the District of Columbia Court of Appeals, which consolidated the appeals for hearing.

The petitioners emphasized again, to the Court of Appeals, the significance of 4 D.C. Code § 116 (also codified as 40 U.S.C. § 101). They pointed out the D.C. statutes requiring a license to carry a pistol, and barring drug addicts from possessing pistols (App.E.1). They urged that the 1975 GSA letter and the course of Federal action described by detective Jagen above showed clearly that the Federal Government desired the District of Columbia to certificate or otherwise establish the suitability of prospective contractor guards. They asserted that the actions of the District of Columbia in knowingly allowing employees of private detective agencies to be armed without licenses, without appointment as special police, without even certification to be *un*armed security officers, were not within the scope of discretion granted by law to the District of Columbia and its officials, and thus were not discretionary acts but rather ministerial acts to which no sovereign immunity should attach. The petitioners noted specifically that the deliberate refusal of the District of Columbia to enforce in Federal offices the D.C. statutes and regulations which they routinely enforced elsewhere in the District of Columbia opened the way to exactly the sort of foreseeable events which did, in fact, occur causing the death of petitioners' decedent.

The District of Columbia Court of Appeals, however—without mentioning 4 D.C. Code § 116—affirmed the summary judgment of the Superior Court, ruling that the actions of the District of Columbia were discretionary and entitled to sovereign immunity.

REASONS FOR GRANTING THE WRIT

Many Federal offices here at the Seat of Government use contractor security guards, including armed guards; and the District of Columbia is making no determination as to whether the guards are habitual drug or alcohol users. Thus, persons working in or having lawful reasons to go into Federal offices are subjected every day to a real risk of physical injury or death, as shown by the facts of

this case. That same risk does not exist for persons at any other locations in the District of Columbia because the District has, and enforces *everywhere except in Federal offices*, statutes and regulations which prescribe screening techinques, including medical examinations, for all prospective private guards. These statutes and regulations deny such guards the right to carry pistols or other deadly weapons unless they have been individually licensed to carry pistols or have been given individual special police authority, and they explicitly bar drug addicts, such as the killer guard here, from having pistols under any circumstances. This arbitrary discrimination by D.C. officials not only inhibits the effective functioning of the Federal Government, but also is a blatant denial of equal protection of the law to individual citizens meeting with or working for their Government.

The writ should be granted both because the challenged course of action has a broad and continuing impact on the Federal Government and its citizens, and because the type of Fifth Amendment issue raised here apparently has not been addressed previously by this Court. A decision now by this Court will provide needed guidance across a broad spectrum of future relationships between the Federal Government, on the one hand, and the District of Columbia and the several territorial governments coming under the Fifth Amendment umbrella, on the other. Here, although violation of Fifth Amendment rights is asserted, it is not the Federal Government which has acted wrongly. Rather the Federal Government, through a number of statutes upon which the petitioners rely, has spelled out in plain words standards which, if followed by the D.C. Government, would comply with Fifth Amendment requirements. Local D.C. officials, however, by ignoring the plain meaning of those statutes, and of regulations adopted by the D.C. City Council, have refused to apply those statutes and regulations in Federal offices—notwithstanding an act of Congress stating explicitly that

such statutes and regulations shall be applied in Federal offices.

The District of Columbia Court of Appeals granted sovereign immunity to the District of Columbia for a continuing course of action which ignored the plain meaning of Congressional statutes, based on a Corporation Counsel's interpretation that a D.C. Regulation (App.E.2) did not mean what it said. By refusing to say whether the Corporation Counsel's interpretation was within the scope of discretion allowed to the District of Columbia by the Congressionally enacted statutes, the Court of Appeals has made the Corporation Counsel, an appointed official of the executive branch of the city government, the final D.C. arbiter of Constitutionally significant Congressional statutes and intentions. The petitioners urge that, particularly if this approach to statutory interpretation is to be followed by local officials subject to the Fifth Amendment, their interpretations should be limited by exactly the same standards of due process and equal protection which apply under the Fourteenth Amendment to State officials.

I

In *U.S. Railroad Retirement Board v. Fritz*, 449 U.S. 166 (1980), this Court stated that the initial issue is the appropriate standard of judicial review to be applied when an action is challenged as being violative of the Fifth Amendment. The Court noted that for some time it had taken the view that for a classification to be valid under the Equal Protection Clause of the Fourteenth Amendment it must rest upon some ground of difference having a fair and substantial relation to the object of the legislation,[1] but that more recently the Court had taken the view that if a classification has some reasonable basis,

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[1] *F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412 (1920). The Court has held that Fifth Amendment Due Process includes Equal Protection such that Fourteenth Amendment precedents may be used in Fifth Amendment cases, *Bolling v. Sharpe*, 347 U.S. 497 (1954).

it does not offend the Constitution simply because it is not made with mathematical nicety or in practice results in some inequality.[2] The *Railroad Retirement Board* decision went on to quote with approval *Flemming v. Nester*, 363 U.S. 603 (1960), and *Helvering v. Davis*, 301 U.S. 619 (1937), that "Our concern here, as often, is with power, not with wisdom." [3]

The petitioners contend that the District of Columbia did not have the power to exclude privately employed persons in Federal offices from the statutes enacted by Congress that all persons in D.C. other than police be individually licensed if they carry pistols. The 1975 exchange of letters between GSA and the D.C. Corporation Counsel addressed only a D.C. regulation, but clearly the Corporation Counsel expected GSA to proceed with arming guards employed by its contractors. His ruling thus created a classification that unscreened and unlicensed private contractor armed guards could work in Federal offices while such persons could not work as guards, even unarmed, anywhere else in D.C. That classification was barred by the Congressional enactments codified in 22 D.C. Code § 3203, 3204 and 3205.[4] If the Corporation Counsel was ruling that those statutes were inapplicable in Federal offices, he was creating an irrational and unreasonable classification. The purpose of the cited statutes is to protect the public from inappropriate persons carrying guns in public. The need for this protection is just as great in Federal offices here at the Seat of Government as any place else. The District of Columbia's acts denying that protection in Federal offices while providing it elsewhere is clearly beyond the power of the

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[2] *Dandridge v. Williams*, 397 U.S. 471 (1970).

[3] 301 U.S. 619 at 644 quoted in 449 U.S. at p. 176.

[4] The fact that these are criminal statutes does not prevent reliance on them in a civil suit: *Wyandotte Transportation Co. v. U.S.*, 389 U.S. 191 (1967).

District and its officials, and is a denial of equal protection under the Fifth Amendment.[5]

The subsequent refusal of D.C. police department personnel to screen prospective contractor guards for Federal offices is even more clearly a violation of Equal Protection because the Congress has clearly stated its intention that the laws and regulations which the District of Columbia has refused to apply to Federal offices *should* apply in those offices. Title 4 D.C. Code § 116, also codified as Title 40 U.S.C. § 101, *supra*, p. 2, clearly states that D.C. laws and regulations for preserving peace and order and protecting property apply in Federal offices. The Corporation Counsel did not mention this very specific Congressional enactment in his 1975 letter or in briefs or oral argument in this case. Similarly, although petitioners cited and discussed this statute repeatedly, neither the trial court nor the court of appeals mentioned it in its decisions (App.A and App.D). This refusal even to recognize the existence of this clear statute by which Congress mandated compliance with Fifth Amendment standards is itself a denial by the District of Columbia of Equal Protection.[6]

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[5] This Court found that the statutory classifications in *Weinberger v. Wiesenfeld*, 420 U.S. 636 (1975) and *Frontiero v. Richardson*, 411 U.S. 677 (1973) served no valid legislative purpose and held that Fifth Amendment Equal Protection had been denied. Here where the applicable Congressional enactments contain no classifications at all, local government officials have implied a geographic classification which discriminates against the Federal Government and against individual citizens who visit or work in Federal offices. This implied classification, where Congress expressed none at all, surely did not rationally serve any valid purpose.

[6] The District of Columbia attempt to justify its inaction on the grounds of Federal preemption is without merit. Federal statutes are silent as to contractor employee guards; and GSA regulations give no rules or standards for selecting or screening contractor employee guards. In any event, preemption is clearly denied by the

The petitioners' decedent had a right to live, and to that end he had a right to have the District of Columbia refrain from actively refusing to comply with Congressionally enacted statutes under which his killer would have been denied the right to carry a gun. The case is not one of mere inaction or inefficiency by the police. The District of Columbia has repeatedly been asked to check the suitability of contractor guards in Federal offices and has deliberately refused to do so. The breach of duty is clear.

It cannot be argued that the District of Columbia reasonably expected that the Federal Government would obtain on its own the protection which the District refused to provide. The police detective furnished by the District of Columbia as its knowledgeable official on the licensing of guards and detective businesses stated under oath that the Federal Government did not have the ability to check guards and that the District had rejected all attempts to have the District check prospective guards for Federal offices. Thus, the District, while checking guards for all other locations, knew that guards in Federal offices were not being checked at all. The violation of equal protection is clear.[7]

II

The District of Columbia's 1975 position that its regulation on security officers did not apply to contractor guards in Federal offices, and the District's subsequent refusal to screen prospective private guards intending to

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Federal Government's repeated attempts to get the District of Columbia to screen contract guards.

[7] If the District was seeking to pass on its responsibilities to the Federal Government, this Court has long held that no State or local government to which a police power has been granted can alienate, surrender or abridge the right to exercise that power by any grant, contract or delegation: *Home Building & Loan Ass'n. v. Blaisdell*, 290 U.S. 398 (1934); *Northern Pacific Ry. v. Duluth*, 208 U.S. 583 (1908).

work at Federal offices, are not acts entitled to sovereign immunity.

This Court as early as *Johnson v. D.C.*, 118 U.S. 19 (1886) distinguished between discretionary planning which is entitled to sovereign immunity and implementing ministerial actions not entitled to immunity. The D.C. Court of Appeals follows a ministerial-discretionary test for determining whether the District is entitled to a defense of sovereign immunity, holding that "If policy considerations were involved and no statutory or regulatory requirements limited the exercise of policy discretion . . . immunity would bar suit." [8] Here, however, that court has expressly declined to consider whether "statutory or regulatory requirements limited" the District's exercise of policy discretion, and, if so, whether the District had exceeded those limits.

This Court in *Harlow v. Fitzgerald*, 457 U.S. 800 (1982) stated that:

> ". . . If the law was clearly established, the immunity defense ordinarily should fail, since a reasonably competent public official should know the law governing his conduct. . . ."
>
> ". . . Where an official could be expected to know that certain conduct would violate statutory or constitutional rights, he should be made to hesitate; and a person who suffers injury caused by such conduct may have a course of action." 457 U.S. at pp. 818-819.

We are not here concerned with potential official immunity for individual local government employees; no D.C. official is being sued individually. The District of Columbia makes decisions and takes action through the acts of its officials and other employees. The test expressed by this Court in *Harlow v. Fitzgerald, supra*, for officials, is thus a test which also should apply to the District of

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[8] *Chandler v. D.C.*, 404 A.2d 964 (D.C. App. 1979) at p. 966.

Columbia itself when it seeks to claim sovereign immunity.

Here, the petitioners believe that the law was clearly established. The D.C. Court of Appeals ruling amounts to a holding that the D.C. Corporation Counsel's interpretation of the law (which is unknown since he has never set forth his interpretation) automatically entitles the District of Columbia to sovereign immunity. The petitioners submit that District of Columbia action contrary to clear statutory requirements is outside the scope of the District's discretion, and not entitled to sovereign immunity even if asserted to be a policy decision.

The writ should be granted here because if the Court of Appeals' decision to grant sovereign immunity without considering whether the immunized act was within or outside the scope of relevant statutes and regulations is not reviewed now, a serious adverse impact on the whole relationship between the Federal Government and the District of Columbia Government will continue. If the D.C. Court of Appeals' decision stands, any Congressional enactment affecting the District will be set to nought whenever the Corporation Counsel decides upon an interpretation different from that intended by Congress.

CONCLUSION

The course of action followed by the District of Columbia, in light of existing laws and regulations, denied equal protection of the laws to persons visiting or working in Federal offices, a dangerous and continuing deprivation which materially impedes the relationship between United States citizens and their Government. Where a local government subject to the Fifth Amendment embarks on a course of action independent of Federal supervision, it should be held to the same standards for due process and equal protection of the laws as are imposed on States subject to Fourteenth Amendment standards. The District of Columbia's defense of sovereign immunity here

should be denied if the District's refusal to enforce Congressionally enacted statutes was outside the scope allowed by the relevant laws and regulations brought to the lower Court's attention. Because of the continuing dangerous deprivation of equal protection here involved, and because of the broad scope for future injury under the lower Court's concept of granting sovereign immunity without considering the scope of relevant laws and regulations, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDICES

APPENDICES

APPENDIX A

DISTRICT OF COLUMBIA COURT OF APPEALS

Nos. 84-138 & 84-261

SEDESSA RUSTIN and FELICIA SHADE TATE,
Appellants,

v.

DISTRICT OF COLUMBIA and
WASHINGTON PATROL SERVICES, INC.,
Appellees.

Appeals from the Superior Court of the
District of Columbia

(Hon. Robert M. Scott, Trial Judge)

(Argued January 24, 1985 Decided April 18, 1985)

John W. Perry, with whom *Rotraud M. Perry* was on the briefs, for appellants.

Edward E. Schwab, Assistant Corporation Counsel, with whom *Inez Smith Reid*, Corporation Counsel, *John H. Suda*, Principal Deputy Corporation Counsel, and *Charles L. Reischel*, Deputy Corporation Counsel, were on the brief, for the District of Columbia.

Ronald G. Guziak for Washington Patrol Services, Inc.

Before PRYOR, *Chief Judge*, and NEBEKER and FERREN, *Associate Judges*.

PRYOR, *Chief Judge*: This is an appeal from an order of the trial court granting the motions of appellees, the District of Columbia and the Washington Patrol Services, Inc. (hereinafter WPS), for summary judgment, and dismissing the claims of appellants, Sedessa Rustin and Felicia Shade Tate. We affirm.

Factual Background

On October 7, 1980, James Kenneth Tate was shot and killed by Barthaniel L. Robinson.[1] At the time of the shooting, both men were employed as security guards by WPS, a private firm, licensed by the District of Columbia,[2] engaged in the business of providing security services. The shooting occured while Tate and Robinson were on duty at Waterside Mall in Southwest, Washington, D.C., in a building which was leased by the Government Service Administration (hereinafter GSA), a federal agency, and which was entirely occupied by the United State Environmental Protection Agency (hereinafter EPA). WPS was under contract with GSA to provide security services for the EPA building.

Robinson stated in his deposition that on the day of the shooting, he had been drinking alcohol and smoking marijuana prior to coming to work. Robinson was issued a gun when he arrived on duty at 2:30 p.m. He continued to consume alcohol and smoke marijuana while on duty. At approximately 5:30 p.m., Robinson left his duty station, walked to Tate's post in a different part of the building, and, apparently unprovoked, shot and killed Tate in front of several witnesses.

Robinson's deposition and his Army records reveal that prior to beginning his employment with WPS in April 1980, and while he was enlisted in the Army between January 1977 and December 1979, he had received treatment for drug and alcohol abuse. Robinson's records also indicate that he was disciplined while in the Army, released before his enlistment ended, and prohibited from reenlisting.

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[1] Robinson later was convicted of manslaughter while armed.

[2] The license was issued by the District of Columbia Department of Licenses, Investigations and Inspections following a background investigation of WPS corporate officers and upon certification that the employees of WPS did not have criminal records.

Following Mr. Tate's death, appellant, Ms. Sedessa Rustin, as administratrix of Mr. Tate's estate, filed a worker's compensation claim under the provisions of the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901-950 (1982) (as incorporated by D.C. Code §§ 36-301 *et seq.* (1981)) (hereinafter LHWCA or the Act), for any and all benefits the estate was entitled to as a result of Mr. Tate's death. The estate subsequently received a compensation award.

Thereafter, Ms. Rustin and Felicia Shade Tate, the decedent's widow, brought suit under the D.C. Wrongful Death Act and the D.C. Survival Act[3] against the District of Columbia and WPS.

Appellants' action against the District of Columbia alleged that the District government's negligent failure to apply District of Columbia laws regulating the certification and employment of private security officers proximately caused the death of Mr. Tate. Appellants argue that had WPS security officers, and in particular Mr. Robinson, been subject to these regulations, Robinson, because of his personal history, could not have been hired as a security guard permitted to carry a gun. They reason that if Robinson had not been hired as an armed security guard, Tate would not have been killed.

In their action against WPS, appellants acknowledge that they secured an award under the LHWCA but contend that the "exclusive remedy" provision of the Act does not bar a tort action against the employer where the latter has committed an intentional tort. They allege that WPS intentionally conspired to bring about the shooting death of Mr. Tate.

The trial court, finding no disputed issues of material fact with respect to either defendant, granted both of appellees' motions for summary judgment and this appeal followed.

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[3] D.C. Code §§ 16-2701, 12-101 (1981).

I. DISTRICT OF COLUMBIA

A. *The Regulations*

The focus of appellants' claims against the District of Columbia government is the District of Columbia Regulations for the Certification and Employment of Security Officers, 5JJ DCRR §§ 1.1 *et seq.* (1979) (hereinafter the Regulations).

The Regulations were adopted by the Council of the District of Columbia in 1974. They require that every private security agency seeking to operate in the District of Columbia must first be certified by the Mayor. *Id.* §§ 1.1, 2.1. The Regulations established a number of qualifications for certification. For example, a person must be at least 18 years old, of good moral character and in reasonably good health. *Id.* §§ 3.3, 3.5, 3.6. In determining whether a person is of good moral character, the Mayor is instructed to consider, "information received from the applicant's employers of the past five years, character references, convictions for misdemeanors, military record, and other relevant information . . . ." *Id.* § 3.5. An applicant cannot be addicted to drugs or alcohol, and must pass a written test. *Id.* §§ 3.5, 3.7.

All security guards certified under the Regulations are required to carry identification cards issued by the Mayor. *Id.* § 4.1. Security guards must wear uniforms which are approved by the Mayor. The uniforms must be "distinctly different" from the uniform of Metropolitan Police Department officers. *Id.* § 4.2 (a). The only weapon a security officer may carry in the course of employment is a "night stick constructed solely of wood"; the carrying of "a deadly weapon, handcuffs, or aerosol chemical dispenser in the course of employment" is prohibited and grounds for revocation of certification. *Id.* § 5.1 (f).

Shortly after the adoption of these Regulations, officials of the GSA met with the District of Columbia Corporation

Counsel to determine the impact of the Regulations on the GSA's ability to protect federal buildings in the District of Columbia.[4] GSA had contracted with a number of private security firms[5] to guard certain federal buildings. GSA was concerned about the possible applicability of the District regulations prohibiting the carrying of firearms because, according to the GSA Administrator, regulations of a number of federal agencies require the use of armed security officers in those agencies' buildings.

On January 25, 1975, the Acting Regional Administrator of GSA wrote D.C. Mayor Washington a letter formally requesting a legal opinion concerning the applicability of the new Regulations to contract security officers who guard federal buildings. Mayor Washington referred the matter to the Corporation Counsel with a request for an opinion.

On May 28, 1975, the Corporation Counsel issued a formal opinion in which he concluded that the Regulations were not intended to cover security matters of the federal government or security officers while they are on duty on federally-owned or leased premises in the District of Columbia pursuant to a contract with the GSA. As a result of the Corporation Counsel's opinion, the District government does not subject security officers under contract with GSA to the requirements of the Regulations nor does the District purport to certify such officers.[6]

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[4] The Administrator of GSA is responsible for protecting public federal buildings. 40 U.S.C. §§ 318, 318a, 490 (a) (4), 490 (b) (1982); 41 C.F.R. §§ 101-20.5 *et seq.* (1984). Moreover, the Administrator is given specific authority to establish a security force for the protection of federal buildings and property. 40 U.S.C. §§ 318b, 318d, 490 (a) (4), 490 (b) (1982).

[5] As distinguished from federal employees who guard federal buildings. Such employees are clearly not subject to the Regulations. *See* Regulations, *supra*, § 1.1 (3) (B).

[6] Accordingly, neither Robinson nor Tate underwent a certification check by the District government. We observe that the GSA

B. *Sovereign Immunity*

The trial court granted the District of Columbia's motion for summary judgment on the ground that the District's actions in question were discretionary in nature and, accordingly, the claim against it is barred by the principle of sovereign immunity.[7]

The doctrine of sovereign immunity is well-settled in the District of Columbia. *Chandler v. Districtof Columbia*, 404 A.2d 964, 966 (D.C. 1979). Under this doctrine, the District government is immune from suit in tort where the act complained of was committed in the exercise of a discretionary function. However, if the act was committed in the exercise of a ministerial function, the government is not immune. *Wade v. District of Columbia*, 310 A.2d 857, 860 (D.C. 1973) (en banc); *Wagshal v. District of Columbia*, 216 A.2d 172, 173 (D.C. 1966).

Ministerial acts are those which require "the execution of a policy as distinct from its formulation." *Boscoe v. Arlington County*, —— U.S. App. D.C. ——, ——, 738 F.2d 1352, 1362 (1984). In contrast, discretionary functions are described as those involving "policy considerations" where "no statutory or regulatory requirements

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has its own regulations, which are similar to the District's, for certifying private security officers. Presumably, Robinson and Tate were required to meet the GSA qualifications.

[7] In reviewing a trial court's order granting summary judgment, this court conducts an independent review of the record. *Phenix-Georgetown, Inc. v. Chas. H. Tompkins Co.*, 477 A.2d 215, 221 (D.C. 1984); *Holland v. Hannan*, 456 A.2d 807, 814 (D.C. 1983). Our standard of review is the same as the trial court's standard for initially considering a motion for summary judgment. *Holland v. Hannan, supra*, 456 A.2d at 814. Pursuant to Super. Ct. Civ. R. 56 (c) summary judgment is only appropriate when, viewing the evidence in the light most favorable to the non-moving party, there are no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law. *See Nader v. de Toledano*, 408 A.2d 31, 41 (D.C. 1979), *cert. denied*, 444 U.S. 1078 (1980); *Willis v. Cheek*, 387 A.2d 716, 719 (D.C. 1978).

[limit] the exercise of policy discretion." *Chandler v. District of Columbia, supra,* 404 A.2d at 966; *see Biscoe v. Arlington County, supra,* —— U.S. App. D.C. at ——, 738 F.2d at 1362. An action is considered discretionary "if the prospect of liability for the decisions [an] officer must make in the course of his performance would unduly inhibit the officer's ability to perform his function." *Rieser v. District of Columbia,* 183 U.S. App. D.C. 375, 388, 563 F.2d 462, 475 (1975). They are decisions "for which there is no reason to believe a jury would render a sounder decision than those officials chosen, qualified, and prepared to make them." *Chandler v. District of Columbia, supra,* 404 A.2d at 966.

The activities at issue here—the Mayor's request for a legal opinion on the proper construction and application of District regulations, the issuance of the Corporation Counsel's opinion, and the District government's subsequent reliance on that opinion—all involve policy formulation and judgment-making processes. *See Biscoe v. Arlintgon County, supra,* —— U.S. App. D.C. at ——, 738 F.2d at 1363 (quoting *Thomas v. Johnson,* 295 F. Supp. 1025, 1031 (D.D.C. 1968)); *see also* D.C. Code § 1-361 (1981) (Corporation Counsel shall furnish opinions to Mayor whenever requested to do so). Thus, it is clear that these actions are discretionary in nature and not ministerial. Accordingly, we conclude that the District government is immune from liability for damages that allegedly resulted from the government's actions with respect to the Regulations, and that the trial court's grant of summary judgment was therefore not erroneous.[8] *See*

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[8] Appellants urge us to examine the merits of the Corporation Counsel's 1975 opinion interpreting the scope of the Regulations. We decline to do so. Our approach is consistent with the reasons underlying the principles of sovereign immunity. The very purpose of the doctrine of sovereign immunity is to protect the government from having to spend significant amounts of time litigating the merits of its policy decisions. *Cf. Harlow v. Fitzgerald,* 457

Urow v. District of Columbia, 114 U.S. App. D.C. 350, 351, 316 F.2d 351, 352, *cert. denied*, 375 U.S. 826 (1963) (immunity attaches where action complained of involved discretionary, quasi-legislative determination); *Cooper v. O'Connor*, 69 U.S. App. D.C. 100, 103, 99 F.2d 135, 138 (1938) (immunity attaches where challenge is to alleged erroneous construction and application of the law).[9]

II. WPS

Appellant's remaining claim concerns the liability of WPS, the employer of Robinson and Tate, for damages in connection with Tate's death. The trial court granted WPS' motion for summary judgment on the ground that the exclusive liability provision of the LHWCA limits appellants to their recovery under the Act and precludes them from recovering damages in a tort action.

The LHWCA requires employers to provide compensation to employees who are disabled or killed in the course of their employment irrespective of fault. 33 U.S.C. §§ 901 *et seq.* (1976). The exclusive liability section of the Act states, in pertinent part:

> The liability of an employer prescribed in section 904 of this title shall be exclusive and in place of all other liability of such employer to the employee, . . . and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death . . . .

U.S. 800, 819-20 (1982); *McSurely v. McClellan*, 225 U.S. App. D.C. 67, 73-74, 697 F.2d 309, 315-16 (1982).

[9] Appellants also contend that the District government is subject to liability in tort because the government owed a "special duty of care" to appellants' decedent. Because we have resolved, as a threshold matter, that appellants' action against the District is barred by sovereign immunity, we need not address the issue of substantive liability. *See Rieser v. District of Columbia, supra*, 183 U.S. App. D.C. at 387-90, 563 F.2d at 475.

LHWCA § 905 (a). Thus, the Act "deprives employees and their representatives of the right to pursue common law tort suits, such as wrongful death actions, against their employers or co-workers if the injuries are covered by the Act." *Harrington v. Moss*, 407 A.2d 658, 660-61 (D.C. 1979).

Appellants emphasize that the restriction in § 905 (a) does not reach actions where the employer specifically intended to injure the employee.[10] *Houston v. Bechtel Associates Professional Corp.*, *supra*, 522 F. Supp. at 1096; 2A A. LARSON, *supra*, § 68.13, at 13-5, and cases cited at n.11. "Employer," in the context of a corporation, is "a person who is realistically the alter ego of the corporation" and not "merely a foreman, supervisor or manager." 2A A. LARSON, *supra*, § 68.20, at 13-10. Appellants' theory in the trial court, and their contention on appeal is that while Robinson committed the actual shooting, it was the corporate officials of WPS who with actual, specific, and deliberate intent conspired to have Mr. Tate killed. According to appellants, the corporate hierarchy of WPS was involved in a narcotics ring operating out of the EPA building, and these officers conspired to kill Mr. Tate because Tate had discovered the existence of this operation.

We have examined the pleadings, the record, and in particular the trial court's detailed memorandum and we concur with the trial court's conclusion that these allegations are totally lacking in merit. We agree with the trial court that

> upon the basis of the evidence proffered by plaintiffs in support of said allegation, no jury could reason-

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[10] Appellants acknowledge, as they must, that § 905 (a) bars an action alleging mere negligence or even willful, wanton, reckless and unlawful misconduct. *Houston v. Bechtel Assoc. Professional Corp.*, 522 F. Supp. 1094, 1096 (D.D.C. 1981); 2A A. LARSON, THE LAW OF WORKMEN'S COMPENSATION § 68.13, at 13-5 (1976).

ably conclude that WPS participated in any manner in the killing of Tate.

In sum, appellants have failed to present any proof, other than conclusory allegations and innuendo, which would support a finding that WPS specifically intended to kill appellants' decedent. They have not offered any deposition testimony, affidavits, or other documents which substantiate any of their claims. Thus, we conclude that there are no remaining material facts in dispute with regard to appellants' claims against WPS. In light of appellants' recovery under the LHWCA, they are now precluded from maintaining a suit in tort against WPS, and accordingly, summary judgment was properly entered.

Finding no disputed material issues with respect to appellants' claims against either appellee, and concluding that appellees are entitled to judgment as a matter of law, we affirm the trial court's orders granting summary judgment.

Affirmed.

APPENDIX B

DISTRICT OF COLUMBIA COURT OF APPEALS

Nos. 84-138 & 84-261

SEDESSA RUSTIN and FELICIA SHADE TATE,
Appellants,
v.
DISTRICT OF COLUMBIA and
WASHINGTON PATROL SERVICES, INC.,
Appellees.

CA 763-81

[Filed Apr. 18, 1985]

On Appeal from the Superior Court of the District of Columbia, Civil Division

Before: Pryor, Chief Judge, and Nebeker and Ferren, Associate Judges.

JUDGMENT

This cause came on to be heard and the transcript of record from the Superior Court of the District of Columbia, the briefs filed by the parties, and was argued by counsel. On consideration whereof, and for the reasons set forth in the opinion filed this date, it is now hereby

ORDERED and ADJUDGED by this court that the order on appeal herein is affirmed.

For the Court:

/s/ Alan I. Herman
ALAN I. HERMAN
Clerk of Court

Dated: April 18, 1985.

Opinion per Chief Judge William C. Pryor.

APPENDIX C

DISTRICT OF COLUMBIA COURT OF APPEALS
500 Indiana Avenue, N.W.
Washington, D.C. 20001

No. 84-261

SEDESSA RUSTIN, *et al.*,
Appellants,
v.
DISTRICT OF COLUMBIA,
Appellees.

CA763-81

[Filed Jun. 18, 1985]

Before: *Pryor, Chief Judge; *Nebeker, Mack, Newman, *Ferren, Belson, Terry, and Rogers, Associate Judges.

ORDER

On consideration of appellants' petition for rehearing or for rehearing en banc, it is

ORDERED by the merits division* that the petition for rehearing is denied; and it appearing that no judge of this court has called for a vote thereon, it is

FURTHER ORDERED that the petition for rehearing en banc is denied.

PER CURIAM

Copies to:

Honorable Robert M. Scott

Clerk, Superior Court

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APPENDIX D

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

Civil Action No. 763-81

SEDESSA RUSTIN, *et. al.*,
Plaintiffs,

v.

WASHINGTON PATROL SERVICE, INC., *et al.*,
Defendants.

[Filed Nov. 16, 1983]

ORDER

This matter is before the Court on the motion of defendant District of Columbia to dismiss the complaint, filed on June 24, 1983, the several memoranda in support thereof, and the plaintiff's several oppositions thereto. The complaint was filed on January 19, 1981, by the personal representative of the decedent, James Kenneth Tate, and the wife and children of Tate who seek damages against several defendants, including the District of Columbia, under the wrongful death and survival statutes.

As a Status Conference held on October 7, 1983, at which counsel for all parties were present, the said motion of defendant District of Columbia to dismiss and the plaintiff's Opposition and Memorandum of Points and Authorities in Support Thereof, filed July 14, 1983, were discussed. The Court, because of the recent decision of the D.C. Court of Appeals in *Platt v. District of Columbia*, decided September 29, 1983, directed plaintiff's attorney to submit a memorandum with respect to that decision and to set forth therein the facts upon which plain-

tiffs relied to establish that a "special relationship" existed between the District of Columbia and Tate. Defendant District of Columbia was also directed to submit a similar memorandum and was directed to submit a statement of any facts it might be aware of concerning the existence *vel non* of a "special relationship" between the District of Columbia and Tate. The Court stated that it might consider the said motion to dismiss as a motion for summary judgment. A further Status Conference was scheduled for November 3, 1983.

On October 14, 1983, plaintiffs filed the requested memorandum.[1]

On November 3, 1983, a second Status Conference was held. At that conference, the Court reviewed in detail the respective positions of the District of Columbia and the plaintiffs, and it took the matter under consideration.[2]

Upon consideration of the said motion to dismiss, including the several memoranda submitted in support thereof, and the several oppositions thereto filed by plaintiffs, including the memoranda filed in support thereof, the Court concludes that the motion to dismiss should be treated as a motion for summary judgment.

The following facts are not in dispute:

1. Tate was shot and killed by defendant Barthaniel L. Robinson, a fellow employee of Washington Patrol Services, Inc. (WPS), while both were on duty as security officers at a building, the entire part of which was leased by the Government Services Administration (GSA), a Federal agency, from Trilon Plaza Corporation, another defendant. The building was occupied by the Environ-

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[1] The District of Columbia filed its memorandum on November 7, 1983, having been granted an extension until that date.

[2] On November 14, 1983, plaintiff filed an additional pleading entitled, "Opposition to Memorandum of Defendant District of Columbia in Support of Motion to Dismiss."

mental Protection Agency (EPA), another Federal agency. Pursuant to a contract between GSA and WPS, WPS was to provide armed security services for the said building. WPS had been issued a license by defendant District of Columbia as a private detective agency following completion of a background investigation of WPS corporation officers and upon certification that the employees of WPS did not have criminal records.

2. The gun used by Robinson to shoot Tate had been issued to him by his employer, WPS, for use in his duties as a security officer at the aforementioned building. Robinson had not been issued a license to carry a gun by the Chief of Police of the District of Columbia. Robinson was subsequently convicted of the crime of manslaughter while armed in connection with Tate's death.

3. On May 28, 1975, the Honorable C. Francis Murphy, the Acting Corporation Counsel, wrote a letter to the Acting Administrator of GSA (see attachment 1 hereof) in response to a letter from the said Acting Administrator to Mayor Washington, dated January 21, 1975 (see attachment 2 hereof), in which he, Murphy, opined as to the applicability of certain regulations (5JJDCRR, which relate to security officers who may and may not carry a gun in the performance of their duties) "to security officers while on duty on Federally-owned or leased premises in the District of Columbia pursuant to a contract" with the GSA.

Having reviewed the various pleadings of the District of Columbia and of the plaintiffs and having heard each party discuss its respective positions at two Status Conferences, it appears that the bases upon which the plaintiffs seek to hold defendant District of Columbia liable for the death of Tate are twofold.

First, that Tate would not have been killed by Robinson but for the fact that the District of Columbia "deliberately disobey[ed]" its own laws relating to those security

officers who may or may not carry a gun in the performance of their duties. The "deliberate disobeyance" by the District of Columbia of its own laws, according to plaintiffs, was the rendering of an opinion by the Acting Corporation Counsel that such laws were "not applicable to security officers while on duty on Federally-owned or leased premises in the District of Columbia pursuant to a contract" with the GSA.[3] Plaintiffs reason that, but for that opinion, Robinson would not have been issued a gun by his employer, WPS, to use in the performance of his duties as a security officer and, therefore, Tate would not have been killed. It is this "deliberate disobeyance" of its own laws that subjects the District of Columbia to liability, according to plaintiffs' argument.

Second, plaintiffs allege that a "special relationship" existed between the District of Columbia and Tate and, as a result, this action may be maintained by plaintiffs against the District of Columbia. The facts upon which plaintiffs rely to establish this "special relationship" are set forth in its "Opposition to Memorandum of Defendant District of Columbia in Support of Motion to Dismiss," filed November 14, 1983. The Court accepts as undisputed the *facts* set forth therein by plaintiffs as the basis for their assertion that a "special relationship" existed between the District of Columbia and Tate.

The District of Columbia, in response to the positions of plaintiffs as set forth above, asserts that (1) the action of the Acting Corporation Counsel in rendering an opinion that the said regulations of the District of Columbia did not apply "to security officers while on duty on Federally-owned or leased property pursuant to a contract" with GSA was a discretionary action by an official of the District of Columbia and, therefore, the District

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[3] By virtue of that opinion, Robinson was able to carry a gun in the performance of his duties as a security officer employed by WPS, which had a contract with GSA to provide armed security services for the aforementioned building.

of Columbia is shielded from this action; and (2) a "special relationship" did not exist between the District of Columbia and Tate and, accordingly, the action cannot be maintained.

Upon consideration of the undisputed facts set forth above, the pleadings filed herein, including the memoranda submitted therewith, and having heard counsel for these parties during two Status Conference urge their respective positions, the Court concludes as follows:

1. The action of the Acting Corporation Counsel in rendering an opinion that the aforesaid regulations (which forbid security officers, other than those individuals commissioned as special policemen, individuals working in their official capacity as employees of the Federal government, and members of the Metropolitan Police Department, to carry guns in the performance of their duties) are not applicable to security officers while on duty on Federally-owned or leased premises in the District of Columbia pursuant to a contract with GSA was, as a matter of law, a discretionary act of an official of the District of Columbia; and

2. The facts upon which plaintiffs rely to establish that a "special relationship" existed between the District of Columbia and Tate, as set forth in plaintiffs' "Opposition to Memorandum of Defendant District of Columbia in Support of Motion to Dismiss," filed November 14, 1983, would not, as a matter of law, permit a jury to conclude that a "special relationship" existed between the District of Columbia and Tate which gave rise to a duty owed by the District of Columbia to Tate to assure that Robinson did not possess a gun in the performance of his duties as a security officer.[4]

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[4] Having concluded that the facts relied upon by plaintiffs to establish a "special relationship" between the District of Columbia and Tate would not permit a jury to conclude that a "special relationship" existed, it is unnecessary for the Court to discuss the several allegations of negligence of the District of Columbia which

WHEREFORE, in consideration of the foregoing, it is the judgment of the Court that summary judgment should be granted in favor of the defendant District of Columbia as to all claims of each plaintiff; accordingly, it is, this 16th day of November, 1983,

ORDERED, that Summary Judgment be, and it is hereby, granted in favor of defendant District of Columbia as to all claims of each plaintiff contained in the complaint filed herein on January 19, 1981.

/s/ Robert M. Scott
ROBERT M. SCOTT
Judge

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plaintiffs relate to Robinson being in possession of the gun with which he shot Tate.

APPENDIX E

STATUTES AND REGULATIONS INVOLVED

1. *Statutes*

4 D.C. Code § 114:

"The Mayor of the District of Columbia, on application of any corporation or individual, or in his own discretion, may appoint special policemen for duty in connection with the property of, or under the charge of, such corporation or individual; said special policemen to be paid wholly by the corporation or person on whose account their appointments are made, and to be subject to such general regulations as the Council of the District of Columbia may prescribe."

4 D.C. Code § 115:

"It shall be the duty of the Mayor of the District of Columbia at all times of the day and night within the boundaries of said Police District:

"(1) To preserve the public peace;

"(2) To prevent crime and arrest offenders;

"(3) To protect the rights of persons and of property;

. . . .

"(10) To enforce and obey all laws and ordinances in force in the District, or any part thereof, which are properly applicable to police or health, and not inconsistent with the provisions of this title. . . ."

4 D.C. Code § 116; also codified in 40 U.S.C. § 101:

"The provisions of the several laws and regulations within the District of Columbia for the protection of

public or private property and the preservation of peace and order are extended to all public buildings and public grounds belonging to the United States within the District of Columbia."

22 D.C. Code § 3203:

"(a) No person shall own or keep a pistol, or have a pistol in his possession or under his control, within the District of Columbia, if:

"(1) He is a drug addict;

"(2) He has been convicted in the District of Columbia or elsewhere of a felony;"

. . . .

"(b) No person shall keep a pistol for, or intentionally make a pistol available to, such a person, knowing that he has been so convicted or that he is a drug addict. Whoever violates this section shall be punished as provided in § 22-3215, unless the violation occurs after he has been convicted of a violation of this section, in which case he shall be imprisoned for not more than 10 years."

22 D.C. Code § 3204:

"No person shall within the District of Columbia carry either openly or concealed on or about his person, except in his dwelling house or place of business or on other land possessed by him, a pistol, without a license therefor issued as hereinafter provided, or any deadly or dangerous weapon capable of being so concealed. Whoever violates this section shall be punished as provided in § 22-3215, unless the violation occurs after he has been convicted in the District of Columbia of a violation of this section or of a felony, either in the District of Columbia or in another jurisdiction, in which case he shall be sentenced to imprisonment for not more than 10 years."

22 D.C. Code § 3205:

"The provisions of § 22-3204 shall not apply to marshals, sheriffs, prison or jail wardens, or their deputies, policemen or other duly appointed law-enforcement officers, or to members of the Army, Navy, Air Force, or Marine Corps of the United States or of the National Guard or Organized Reserves when on duty, or to the regularly enrolled members of any organization duly authorized to purchase or receive such weapons from the United States, provided such members are at or are going to or from their places of assembly or target practice, or to officers or employees of the United States duly authorized to carry a concealed pistol, . . ."

2. *Relevant Provisions from Title 5JJ of the District of Columbia Rules and Regulations: "CERTIFICATION AND EMPLOYMENT OF SECURITY OFFICERS"*

"Sec. 1.1 The following definitions shall apply to terms used in these regulations:

(a) Private Detective Agency—a person, firm or corporation licensed as a private detective agency under Title 5EE of the District of Columbia Rules and Regulations (DCRR) which provides security officer services for a fee or other consideration.

(b) Certification—the permission which must be granted by the Mayor before a person can lawfully be employed as a security officer in the District of Columbia.

(c) Chief of Police—the Chief of the Metropolitan Police Department of the District of Columbia or his designated agent.

(4) Employer—unless the context implies otherwise, a person, firm, corporation, or other private organization providing security officer serv-

ice exclusively in conneciton with the affairs of the one business organization which employs them.

(e) Security Officer—any person privately employed to prevent the theft, misappropriation, or concealment of goods, wares, merchandise, money, bonds, stock certificates, or other valuable documents, papers, and articles OR to prevent damage to real or personal property OR to prevent assaults, gate-crashing, or other disorders at meetings, events, or performances OR to prevent similar illegal occurrences, and including the following:

(1) Uniformed individuals employed by an agency or other employer for any of the above purposes;

(2) Uniformed individuals privately employed as guards, watchmen, patrol service personnel for specified property, security technicians, security officers, and other similar positions;

(3) EXCEPT, that the following shall *not* be included in the terms "Security Officer":

(A) Individuals commissioned as special policemen pursuant to *D.C. Code*, § 4-115;

(B) Individuals working in their official capacity as employees of the Federal Government; or

(C) Members of the Metropolitan Police Department or the public police force of any other jurisdiction.

(f) Mayor—the Mayor of the District of Columbia or his designated agent.

"Sec. 2.1 *Filing of Applications*—Application for certification as a security officer shall be made to the Mayor on a form prescribed by the Mayor. Every person applying for certification shall submit to the Mayor, under oath, the information required by these regulations, as well as such other information as the Mayor may require for assistance in determining the applicant's suitability for certification.

. . . .

"Sec. 2.4 *Previous Employers; Character References*—Every applicant shall submit, as part of the application, the names and addresses of the applicant's employers for the previous five (5) year period. The applicant shall also provide on the application, as character references, the names and addresses of three (3) persons (other than employers of the previous five years) who are *not* related to the applicant by blood, marriage, or legal decree.

. . . .

"Sec. 3.5 *Character*—Except as otherwise stated in these regulations, no person shall be employed as a security officer unless such person has first been certified by the Mayor as being of good moral character. In making such a determination, the Mayor shall consider information received from the applicant's employers of the past five years, character references, convictions for misdemeanors, military record, and any other relevant information which the Mayor's investigation reveals.

"Sec. 3.6 *Health*—Each applicant for certification shall be required to submit at doctor's certificate stating that, to the best of the doctor's knowledge after examining the applicant, the applicant is not presently addicted to drugs or alcohol; and is not suffering from serious heart disease, severe epilepsy, or other physical defect which might cause substantial loss of consciousness in situations of severe stress,

Whe. testing for epilepsy or other physical defect which might involve substantial costs to determine, the doctor may rely upon the sworn statement of the applicant, under oath, and must give his affirmation to the same effect; Provided, that in cases where certification is requested concurrent with or as a condition of employment with a private detective agency or a business employer, such agency or employer shall certify as to the health of the applicant.

"Sec. 3.7 *Testing*—When a person applies for certification, the Mayor shall supply the applicant with a brief synopsis of relevant statutes and regulations, and a clear statement of the powers and limitations of a security officer in the District of Columbia including a statement of the possible penalties set forth in Section 6.1 for noncompliance with relevant regulations. Upon satisfactory completion of the investigations and determinations required by this section, applicants for certification shall be required to pass an examination given by the Mayor testing their security-related knowledge and their understanding of a security officer's powers, limitations, and duties.

. . . .

"Sec. 5.1 *Grounds for Denial, Suspension, or Revocation of Certification*—Certification of a security officer shall be subject to denial, suspension, or revocation for any of the following reasons:

(a) Material misstatement in the license application;

(b) Violation of requirements pertaining to identification cards, uniforms, and badges as set forth in Section 4;

(c) Failure or refusal to comply with any statute or regulation governing security officers or the wilful and fraudulent circumvention of any statute or regulation;

(d) Conviction of a felony while employed as a security officer Provided, that denial, suspension, or revocation on this ground shall not prevent an individual from reapplying for certification;

(e) Conviction of a misdemeanor involving theft, fraudulent conduct, assault, false arrest or imprisonment, or any offense arising out of or based on employment as a security officer which involves a breach of trust or an invasion of privacy; or

(f) Carrying a deadly weapon, handcuffs, or aerosol chemical dispenser in the course of employment. This does not prohibit the carrying of a night stick constructed solely of wood."